THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.4118 OF 2004

DISPOSED OF ON 21-09-2005

BETWEEN:

Smt.D.Chand Begum and others … Petitioners

And

The Joint Collector, Cuddapah and others…Respondents.

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.4118 OF 2004

O R D E R :

1. This writ petition is filed by the petitioners seeking a writ of mandamus to declare the proceedings in D.Dis.(E.3)/ 1238/2002, dated 14.2.2004 issued by the 1st respondent as illegal and further declare that the petitioners are entitled for pattadar pass books and title deeds in respect of the land admeasuring Ac.73-03 cents in Sy.Nos.28 to 35 and 49 of Putlampally village, Kadapa District.

2. Smt.Mariambee @ Ahamed Bee daughter of late Nathad Khan of Kadapa filed an appeal before the Tahsildar, Kadapa-appellate authority under the A.P. Record of Rights Land Act, 1971 (for short ROR Act) for rectification of entries in the revenue record. A gazette notification under section 5(5) of ROR Act inviting objections for carrying out transfer of entries in favour of Nathod Khan Yusuf Zai who claim the lands through lineage to one Karim Khan. A notification was published in the District gazettee No.4, dated 6.4.1985 and thereafter orders were passed by the Mandal Revenue Officer in reference No.A3/2324/85 for transfer of record in the name of Nathad Khan Yousuf Zia removing all other names. A gazettee notification under section 7 of ROR Act was also issued and published in the District gazette on 6.9.1985. Smt.N.Prameelamma-3rd respondent and 10 others filed application before the Collector, Kadapa questioning the proceedings of MRO, Kadapa whereunder rectification in the revenue records was sought to be given effect in favour of Nathod Khan Yousuf Zai. The Joint Collector passed orders on the said application on 19.5.1987 directing the applicants to establish their claim in a civil court. 3rd respondent and others submitted representation to the District Collector questioning the notifications issued with regard to the rectification of entries in the revenue record in favour of Nathod Khan Yousuf Zai. The District Collector verified the concerned records under section 9 of ROR Act and cancelled the gazettee notification dated 6.8.85 and remanded the matter back to the MRO, Kadapa. The relevant portion of the order passed by the District Collector in proceedings dated 25.6.87 read as follows:

" One Prameelamma Sivanandapuram Colony, Cuddapah and others put in several petitions requesting for the cancellation of the Notification issued by the Mandal Revenue Officer, Cuddapa stating that they are legal owners of the lands and that Gazettee Notifications were issued without proper enquiry and without giving them any notice and that the Gazette Notification were never published in the village.

On verification of the concerned records wherein the Tahsildar (MRO) cuddapah issued orders for the incorporation of changes in the Registry of Record of Rights and the way in which the Gazette Notification No.9 dated 6.9.85 were issued and in the light of the remarks of the Mandal Revenue Officer, Cuddapah dated 31.12.1986. I am of the opinion that the necessary statutory procedure as not followed by the Mandal Revenue Officer, Cuddapah in ordering the charges in the ROR Register of Putlampalli. I therefore order for the cancellation of this gazette Notification dated 6.9.1985 and U/s 9 of the ROR Act remand the case back to the MRO, Cuddapah for conduct of detailed enquiry and passing orders in respect of each of the survey numbers claimed by the petitioner Nathad Khan and pass final orders in accordance with the statutory provisions of the Act and Rules."

Mariam Bi alias Ahmed Bi who initiated proceedings for amendment entries in the revenue records in favour of her father-Nathod Khan Yousuf Zai died on 3.5.1989.

3. D.Sardar Khan claiming to be son of Mariam Bee filed W.P.No.15510 of 1989 questioning the order passed by the District Collector, Kadapa. The said writ petition came to be disposed of with a direction to the District Collector to issue notice to all parties and pass orders afresh within a period of four months from the date of receipt of a copy of the order. D.Sardar Khan died on 12.6.1996. The petitioners claiming to be the legal heirs of D.Sardar Khan filed W.P.No.24568 of 2000 questioning the inactioin of the District Collector, Kadapa in confirming the notification entries in all the revenue records made in pursuance of notification dated 10-8-1985 published in Cuddapah District Gazettee dated 6.9.1985 in respect of the land admeasuring Ac.73-03 cents comprising Sy.Nos.28 to 35 and 49 situated at Putlampally village, Cuddapah Mandal and district. The said writ petition came to be disposed of directing the District Collector to conduct enquiry in the matter. The operative portion of the order reads as follows:

" In the result, the writ petition is disposed of directing the District Collector, the first respondent herein to conduct inquiry into the matter, as directed by this Court in W.P.No.15110 of 1989 dated 10-8-1994, and complete the same within a period of three weeks from the date of receipt of a copy of this order and pass appropriate orders. The petitioners on one hand, and the respondents 3 to 6 on the other hand, may approach the District Collector with a copy of this order on 18.3.2002 and raise all the questions raised before this Court. Before I leave this case, I may observe that there is dispute as to the possession of the land in question. Both the parties submit that they are in possession of the land. However, it appears that in A.S.No.1744 of 2001 this Court granted status quo order and as such interests of justice would be met by ordering status-quo as to the possession by the parties."

The Joint Collector took up the case on file under section 9 of A.P. Rights in Land and Pattedar Pass Books Act, 1971 (for short the Act), heard the parties and passed orders on 14.2.2004 allowing the revision filed by 3rd respondent and others. Thus, this writ petition by the petitioners claiming to be legal heirs of D.Sardar Khan assailing the proceedings of the Joint Collector in Dis.(E3)/1238/2002, dated 14.2.2004.

4. The case of the writ petitioners as set out in the affidavit filed in support of the writ petition is as follows:

One Karee Khan Yousuf was granted Inam for his services rendered as jailer by the Inamdar. The said Kareem Khan Yousuf died leaving behind his son by name Khairan Khan Yousuf @ Biran Khan. Khairan Khan Yousuf @ Biran Khan died leaving behind his only son Nathad Khan yousuf Zai. He inherited the properties and he has been registered as holder of the said lands under Inam Abolition Act, 1951. The said Nathad Khan Yousuf Zia died in 1957 leaving behind his son Ibrahim Khan and daughter Mariam bee @ Ahmed Bee. Ibrahim Khan relinquished his rights to Mariam Bee @ Ahmed Bee and thereby Mariam bee @ Ahmed Bee became the absolute owner of the property held by Nathod Khan Yousuf Jai. Mariam bee died leaving behind her only son D.Sardar Khan. The said D.Sardar Khan died in 1996 and the petitioners are his sons and daughters and thus they are absolute owners of the properties. It is their further case that one Y.Kameswara Rao, Karanam of Putlampally village, tampered the records and got the names of his

relations and friends mutated surreptitiously in the village records in respect of the properties held by Nathod Khan Yousuf Jai. Departmental proceedings were initiated against the said Karanam, wherein the allegations leveled against him were proved. Before any action could be taken against him, he died and therefore the said proceedings stood abated. Mariam Bee filed O.S.26/76 on the file of Subordiante Judge, Kadapa, seeking declaration of her title in respect of Ac.28-92 cents comprising Sy.Nos.25, 26 and 27 of Putlampally village. Some others also filed suit in O.S.No.11/1979 for declaration of their title in respect of self same properties. Both the suits were clubbed together and common judgment came to be passed on 29.8.1981 declaring the title of Mariam Bee. The unsuccessful parties in the said suits carried the matter in an appeal in A.S.No.324 of 1982. The said appeal came to be dismissed on 16.12.1994 and further LPANo.151 of 1995 also came to be dismissed on 18.4.2003. Mariam bee filed an appeal under ROR Act before the then Tahsildar, Kadapa for deleting the entries made in the ROR register and inclusion of the name of her father Nathod Khan Yousuf Jai. The Tahsildar issued notice under section 5 of ROR Act. Since no objections were received by the competent authority, the competent authority ordered for rectification of entries in the revenue records. 3rd respondent and others filed revision before the Collector and the said revision came to be rejected and thus the proceedings with regard to rectification of entries reached finality. An application was filed by 3rd respondent and others before the District Collector for cancellation of notification dated 6.9.85. The District Collector, Kadapa by proceedings dated 25.6.87 cancelled the gazette notification dt.6.9.85 under section 9 of ROR Act and remanded the case to MRO. Questioning the order passed by the District Collector, D.Sardar Khan filed W.P.No.15510 of 1989 and the said writ petition came to be disposed of with a direction to the District Collector to hear the parties and pass appropriate orders. After the death of D.Sardar Khan, his legal representatives filed W.P.No.24568 of 2000 questioning the inaction of the District Collector in disposing of the matter and the said writ petition came to be disposed of with a direction to the District Collector to conduct enquiry into the matter within three weeks from the date of receipt of a copy of the order and pass appropriate orders.

5. Respondents 3 to 20 put in their case in detail before the District Collector. The petitioners herein filed counter affidavit. The Joint Collector after considering the material brought on record and on hearing both the parties allowed the revision.

Hence this writ petition.

6. Heard P.Gangaiah Naidu, learned counsel appearing for the petitioners, learned Government Pleader for Revenue appearing for R1 and R2, C.V.Nagarjuna Reddy appearing for R3 to R6, V.R.Reddy Kovvuri appearing for respondents 7 to 10 and M.Narasimha Reddy appearing for respondents 11 to 20.

7. Learned counsel appearing for the petitioners submits that the order impugned in the writ petition passed by the Joint Collector is not in accordance with the direction given in W.P.No.24568 of 2000 and thus the impugned order is required to be set aside. In elaborating his arguments he submits that the direction in the earlier writ petitions was to the District Collector to dispose of the revisions filed by 3rd respondent and others was not to the Joint Collector and since the order impugned in the writ petition has been passed by the Joint Collector, the same is liable to be set aside. In support of his submissions, he placed reliance on Supreme Court decision in GOVERNMENT OF A.P. v. GUDEPU SAILOO and the decision of this court in K.GNASESHWAR V. STATE OF A.P. AND OTHERS. In the first cited decision it has been held that when a mandamus is issued to a particular authority, no other authority has jurisdiction to consider the matter in violation of directions of the High Court. In the cited case, Mandamus was issued to the Collector, R.R. District to hear and dispose of the explanation, which was required to be submitted by the respondents therein in reply to a show cause notice issued to them. The District Revenue Officer considered the explanation to the show cause notice and passed the orders. In the facts and circumstances, the Supreme Court observed in para 16 as follows:

> " 16. We cannot subscribe to the view expressed by the High Court insofar as the order passed by the District Revenue Officer is concerned. Since a mandamus was issued to the Collector, Rangareddy District, to hear and dispose of the explanation, which was required to be submitted by the respondents in reply to the show cause notice issued to them, the District Revenue Officer had no jurisdiction to consider the matter in violation of the direction of the High Court. As a matter of fact, the explanation to the show cause notice had to be submitted before

> the Collector and the Collector alone had to consider and take a final decision in the matter. The action initiated by the Collector and the ratification of his order by the State Government are matters which should have been allowed to take final shape instead of being challenged at the interlocutory stage by the respondents. That being so, there is no necessity of going into the merits of the submissions made by the learned counsel for the parties with regard to the provisions of Sections 166-B and 166-C of the Andhra Pradesh (TA) Land Revenue Act, 1317 Fasli."

In the second cited decision, it has been held that when a Mandamus was issued to the Collector to hear and dispose of the same, the Joint Collector has no jurisdiction. Para 10 of the judgment needs to be noted and it is thus:

" 10. The other contention raised by the learned counsel for petitioner is that since this Court in W.P.No.13862 of 1984 directed the Collector to hear and dispose of the petition, the Collector only, but not the Joint Collector (3rd respondent), can hear and dispose of the petition, and since it is the Joint Collector but not the Collector that had passed the order impugned, it is a nullity, as held in GOVERNMENT OF A.P. v. GUDEPU SAILOO where the District Collector ignoring the directions given to him to hear the case made over the case to the District Revenue Officer, who heard and disposed of the case. The apex court held that since mandamus was issued to the Collector to hear and dispose of the case, District Revenue Officer had no jurisdiction to consider the case, in violation of the direction of the High Court. The ratio in that case applies on all force to the order impugned in this petition. For that reason also the order impugned is not sustainable."

8. Learned counsel appearing for respondents 3 to 6 submits that Collector means the Collector of a District who includes Joint Collector as per Sec.2(2) of the Act and therefore the order impugned in the writ petition passed by the Joint Collector cannot be said to be not in accordance with the direction given by this Court in W.P.No.15510 of 1989 and W.P.No.24568 of 2000. The definition Collector came to be amended by Act.1/89. Prior to the amendment, the word Collector has been defined in Sec.2(2) of the Act as follows " Collector means any Officer incharge of a revenue division; and includes a Deputy Collector, Sub-Collector or an Assistant Collector." After the amendment of the definition by Act 1 of 1989 Collector means Collector of a District who includes Joint Collector. Prior to the amendment Joint

Collector was not within the meaning of Collector. Admittedly, the order impugned in the writ petition came to be passed after the amendment Act 1/1989. Thus, the contention of the learned senior counsel appearing for the petitioners that the Joint Collector is not competent to pass order in view of the mandamus being issued to the Collector only and so the impugned order is a nullity, has no substance. At the cost of repetition, I may make myself clear that the decisions relied on by the learned senior counsel appearing for the petitioners in (2) cited decision does not help the petitioners, because in the said decision relates to A.P.(TA) Land Revenue Act, 1317 fasli. In the said Act there is no definition of Collector inclusive of Joint Collector. Hence, the facts in the cited decision are distinctive with the facts in the case on hand and hence the cited decision does not help petitioners.

9. Learned senior counsel appearing for the petitioners further submits that the Joint Collector who passed the order impugned in the writ petition went on the wrong premise that he was not required to be adjudicated on the maintainability of the second revision petition. Learned counsel refers to the order passed in W.P.No.15510 of 1989 whereunder liberty was given to the petitioners to contend maintainability of the second revision before the District Collector, Kadapa. He emphasizes on para 76 of the order impugned in the writ petition and it is thus:

> " 76. Commenting on the rights of the District Authority that Collector has no jurisdiction to enquire into their claims again by way of a second revision petition which is permitted under the Act, is quite meaningless. It appears that he has not gone through the orders of the Hon'ble High Court of A.P., Hyderabad in W.P.No.24568 of 2000 dated 7.3.2002. The orders of the Honourable High Court of A.P., Hyderabad has been honoured and orders are passed accordingly following the Rules and Regulations of A.P. Rights in Land and Pattedar Pass Books Act, 1971."

It appears the Joint Collector has not gone correctly understood the order passed in W.P.No.15510 of 1989. It is clear from the order passed in the said writ petition that D.Sardar Khan through whom the petitioners are claiming rights over the property was given liberty to contend maintainability of second revision petition before the revisional authority. Be that as it may, the earlier revision petition was considered by

the Joint Collector and directed the revision petitioners before him to establish their claim in a civil suit. The revisional order is dated 19.5.1987. As on 19.5.1987 the Collector does not include Joint Collector. Indeed the application was presented by Karnatipochamma and others to the District Collector seeking revision of the order passed by the Mandal Revenue Officer for amendment of entries in favour of Nathod Yousuf Zai. The Joint Collector gave an endorsement on 19.5.1987 directing the revision petitioners before him to establish their claim in a civil court. Prior to the amendment of Act.1/89 the Collector does not include the Joint Collector. Therefore, it can be said without any ambiguity that Joint Collector has no jurisdiction to pass orders on the revision petition. It has been held by the Apex Court in KARAN SINGH V. CHAMAN PASWAN that the decree passed by a Court without jurisdiction is a nullity. This decision squarely applies to the facts of the case on hand. Since the Joint Collector had no revisional powers prior to amendment Act.1/89, the order passed by the Joint Collector is a nullity. Therefore, the contention raised by learned senior counsel appearing for the petitioners that the petition submitted by the petitioners to the District Collector on 13.6.1987 virtually amounts to second revision petition has no substance.

10. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or Officers act wholly without jurisdiction, or in excess of it or in violation of the principles of natural justice or refuse to exercise jurisdiction vested in them or there is an error apparent on the face of the record and such Act, omission, error or excess has resulted in manifest injustice. However, extensive the jurisdiction may be it is not so wide so as to enable the High Court to convert itself into a court of appeal or examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made vide the decision of Supreme Court in VEERAPPA V. RAMAN AND RAMAN LTD.

11. Learned senior counsel appearing for the petitioners submits that the pleadings of respondents 7 to 20 were not put on notice to the petitioners during the course of enquiry by the revisional authority and therefore there was no opportunity to the petitioners to repel the pleas advanced by the said respondents. Though the contention appears to be sound on the first blush, but on close scrutiny of the

records the same is liable to be rejected. In pursuance of the directions of this court the learned Government Pleader for Revenue placed on record the entire file maintained by the revisional authority. The application filed by respondents 7 to 10 was very much available in the file. The proceedings went on before the revisional authority for quite a long time. At no point of time the petitioners complained before the revisional authority of their not supplying the pleadings filed on behalf of respondents 7 to 20. Indeed on many occasions the learned counsel on behalf of both the parties appeared during the course of enquiry and placed their respective contentions before the revisional authority.

12. Learned senior counsel appearing for the petitioners submits that the revisional authority was carried away by the entries in the revenue record and therefore the order impugned in the writ petition is liable to be set aside. In other words what he means to say is revenue records by themselves cannot prove the title to the property unless it is supported by other evidence. Reliance has been placed on the decision of Supreme Court in DILIP SINGH AND OTHERS V. SIKH GURUDWARA PRABHANDAK COMMITTEE AND OTHERS and the decision of our High Court in B.LAXMI NARAYANA AND OTHERS V. P.RAJEEV. In the 4th cited decision it has been held that entires in the revenue records by themselves cannot prove title to the property unless they are supported by other evidence. In the 5th cited decision it has been held that the presumption under the ROR Act would operate only when true facts are not known and original ownership cannot be traced. An entry in khasra Pahni by itself cannot create or defeat a known title established under general law of the country. An entry in Khasra Pahni no doubt permits the raising of a presumption in favour of its truthfulness. But the fact of such a presumption cannot have the legal effect to defeat an admitted right known to exist under the general law of presumption is part of an adjectival law. It neither creates nor destroys substantive rights. It does not displace the general substantive law of property.

13. Per contra, learned counsel appearing for respondents 3 to 6 submits that entry in revenue records shall be presumed to be true until contrary is proved or until it is

amended and therefore the revisional authority is justified in taking note of the existing entries. Reliance has been placed on the decision of Division Bench of our High Court in CHANUMOLU NIRMALA AND OTHERS V. CHANUMOLU INDIRA DEVI wherein it has been held that every entry in record of rights shall be presumed to be true until contrary is proved.

14. It is no more in dispute that the name of Nathad Khan was not appearing in the revenue records till 1985, therefore Mariam bee filed application before the recording authority under the Act for correction of entries in the revenue record by way of inclusion of the name of Nathad Khan by deletion of the names of the persons who are already figuring in the relevant columns. The recording authority did not issue any notice to the persons whose names figured in the revenue record. But he chose to issue notification in the District Gazette and proceeded to pass orders. The reason for Mariam Bee to take steps for inclusion of the name of his father Nathad Khan in the revenue records is because of her success in the suits (O.S.26/76 and os.11/79). At this juncture it is required to be noted that the subject matter in those two suits are in no way concerned with the lands in respect of which rectification was sought for by Mariam Bee. Mariam Bee claims the property through Nathod han who traces lineage to Karim Khan Yousuf @ bairam Khan. The plea advanced by Mariam Bee is that he got two thirds share in the properties held by his father Nathod Khan by way of conveyance deed executed by her brother Ibrahim Khan. Admittedly, the names of Mariam bee and Ibrahim Khan do not appear in the revenue records as on the date of filing of an application. There is enough evidence on record to show that Pattedar Pass Books were issued in favour of most of the respondents. The issuance of the pattedar passbooks is in accordance with the provisions of the Act. It is trite to note that the revenue authorities issued pattedar pass books in favour of 4TH respondent-Nagabhushan Reddy, 6th respondent-A.Ratna Reddy, 7th respondent- Malleswara Reddy, 8th respondent-Mallikarjuna Reddy, 9th respondent-P.Siva Sankara Reddy, 10th respondent-P.Jayamma, 11th respondent-Chinnaramalinga Reddy, 12th respondent-K.Krishna Reddy, 13th respondent-Rajashekhar Reddy and 20th respondent-Jambapuram Narayanana. The issuance of these pattedar pass books under the provisions of the Act. Under section 3(3) of the Act any person effected by an entry in such records of rights may

within a period of one year from the date of notification refer the same for rectification of entry. Admittedly, Mariam Bee did not file the application for rectification of the entries in the revenue records within the time stipulated under section 3(3) of the Act. So far as lands claimed by R7 to R10 are concerned, they have already filed a suit for declaration in O.S.49/90 and O.S.45/98 and the suits ended in dismissal and they challenged the judgment and decree passed in the suits by filing an appeal and obtained status quo order. Therefore pending disposal of the appeal, the question of correction or amendment of existing entries in the revenue records in respect of the lands claimed by them does not arise.

15. The revisional authority has taken into account the claims made by each of the revision petitioners and referred the documents on which the revision petitioners placed reliance. Since the revisional authority has given cogent and valid reasons for drawing conclusions as to why the corrections of entries in the revenue records cannot be made, I find the order passed by the revisional authority does not call for interference by this court in exercise of jurisdiction under Art.226 of the Constitution. It is for the LRs of Mariam Bee to establish their rights in the civil court as contemplated under section 8(2) of the Act. Whatever observations made by this court or by the revisional authority shall be confined only to the properties claimed by the respondents herein. The revisional authority has observed that the petitioners are in no way concerned not only for the lands now in dispute but also for the lands cancelled by the District Collector, Kadapa. This observation is uncalled for since the dispute is only between the petitioners and respondents herein. With regard to the lands with respect to which the present dispute is not concerned, the revisional authority is not expected to make any observation and the observation made with regard to the lands not in dispute is unwarranted.

16. In the result, I find that this writ petition is devoid of merits and the same is dismissed. No costs.

Dated: 21-09-2005. (B.Seshasayana Reddy,J)

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THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

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